IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRIMINAL MISC.NO.10743 M OF 2004

DATE OF DECISION: JANUARY 24, 2007

Amarjit Kaur and others

.....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Amit Mehta, Advocate,
for the petitioners.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Prayer made in the present petition is for quashing of an FIR No.353 dated 22.11.2002 registered under Sections 363, 366 IPC at Police Station, Saleem Tabri, Ludhiana.

The petitioners are Amarjit Kaur @ Vicky, Rajwinder Kumar @ Raja alongwith one Beero wife of Lal Chand. The impugned FIR was lodged by Beero mainly alleging that her daughter, Amarjit Kaur had been enticed by Rajwinder Kumar, who was living in the neighbourhood of the complainant. It is on this complaint made by petitioner No.3, Beero, that FIR under Sections 363 and 366 IPC was registered. The police came into action and investigated the matter. Though challan has been presented in the Court but the matter was

amicably resolved due to intervention of the relatives and respectables. Petitioners, Amarjit Kaur and Rajwinder Kumar have solemnized their marriage and both are now living as husband and wife. Not only this, it is further revealed that by now they have two off-springs out of this wedlock. They are now living happily and fully settled in their married life. The proceedings, however, against petitioner No.2, Rajwinder Kumar, are still in progress. The present petition accordingly has been jointly filed by the three petitioners, who are husband and wife and the complainant, pleading that there would not be any chance of conviction in this case and any proceedings, if continued, would result in sheer wastage of time of the Court.

On notice being issued, a reply on behalf of the State has been filed. A stereotype objection has been raised to the effect that challan in this case has been presented and the trial is in progress. The quashing of this FIR and the proceedings have accordingly been opposed on this ground. It is further disclosed in the reply that the offences being non-compoundable, the quashing could not be ordered on the basis of a compromise and accordingly it is prayed that this petition be dismissed.

Though the objections raised in the reply filed by the State may legally appear to be sound, yet the same are required to be appreciated having regard to the peculiar facts noticed in the present case. Ordinarily, the non-compoundable offences, as alleged in this case against petitioner No.2, may not be permitted to be compounded and quashing ordered on the basis of a compromise, still the present case would deserve some special treatment. Here is

a case where admittedly petitioner Nos.1 and 2 are married and are now rearing two children born out of this wedlock. Should their married life and happiness be disturbed due to technicalities that may be staring at the case? In order to doubly assure, petitioner, Amarjit Kaur, was directed to appear in person before the Court alongwith complainant-petitioner No.3. On 19.12.2006, complainant clearly stated that his daughter and Rajwinder Kumar, petitioner Nos.1 and 2 are married and having two children. Complainant, thus, supported the prayer for quashing the FIR.

Should under such circumstances, the proceedings in this case, as prayed by the State, be allowed to continue and in the bargain the petitioners made to suffer the consequences of the proceedings and trial, whose result is a foregone conclusion?

It is not very difficult to visulise that this married couple would suffer serious consequences if due to these technicalities, the proceedings are allowed to continue. Not only they will suffer but their small children would also be effected. To what result would be these proceedings, when the girl allegedly abducted is not likely to support the prosecution. It may, thus, be seen if the FIR and the subsequent proceedings in such like case can be quashed or not?

Reference in this regard may be made to the judgment of **Haji Nihal Ahmad and others Vs. State of U.P and another, 1998 Crl. L.J. 2082.** In this case, the question whether a proceeding in a criminal case arising out of non-compoundable offences can be quashed came up for consideration. It was observed that even if the proceedings in such case are allowed to be tried by the Court, the ultimate result would be an acquittal as the complainant party was

not likely to support the prosecution case. It was accordingly observed that trial in such a case would be an exercise in futility. It can be noticed that in a case where the parties have settled their differences and dispute though outside the Court, it would rather be unnecessary and unwarranted to continue with this trial which ultimately would be a fruitless exercise. In **S.M. Jayaram Vs. State of Karnataka, 1976 Crl. L.J. 217,** it was observed that after the parties had compromised among themselves, the Police had no business to file a charge sheet etc. and to further represent that the case being under Section 379 IPC for theft can only be compounded with the permission of the Court.

By now, it is fully settled that High Court in exercise of its inherent powers can quash proceedings if it finds that allowing of any such proceedings to continue would be an abuse of process of the Court or that ends of justice require that the proceedings be quashed. In this regard, observation of the Hon'ble Supreme Court in **State of Karnataka Vs. L.Muniswami AIR 1977 SC 1489** can be referred. It was observed in this case, that the ends of justice are higher than ends of mere law. It was further said that though justice has got to be administered accordingly to the laws made by the legislature yet the Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. As per the Hon'ble Supreme Court, the lame prosecution could be quashed. The relevant observation of the Hon'ble Supreme Court is reproduced below:-

"In the exercise of this wholesome power, the High Court

is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

It can be noticed that in various judgments, the Hon'ble Supreme Court and various High Courts have granted permission for compounding of offences in the non-compoundable offences. A Full Bench of this Court has gone into this aspect in detail in Dharambir Vs. State of Haryana, 2005 (3) RCR (Criminal) 426 and has held that criminal proceedings in prosecuting a case relating to

matrimonial can be quashed in exercise of inherent jurisdiction under the provisions of Section 482 Cr.P.C. Though the Full Bench has ruled that High Court has no power to quash the proceedings or allow compounding of offences either under the Code of Criminal Procedure or the Constitution except in matrimonial cases, yet it went on to hold that High Court can quash criminal proceedings in the interest of justice and to prevent abuse of law. It was also observed that the terms `abuse of process of law' and `in the interest of justice' cannot be put in straight-jacket formula and Courts were left to decide as per the facts in each case. As per the said Full Bench, while exercising powers under Section 482 of the Code, the Court has, in given cases, quashed the criminal proceedings where it felt that the same were required to prevent the abuse of process of any Court or to otherwise secure ends of justice. The Full Bench further held that these decisions would necessarily involved an appraisal of the facts and circumstances of each case and Court could not, while interpreting the statutory provisions, take upon itself the onerous responsibility of extending the powers of compounding of offences to cases other than those listed in Section 320 (1) and (2) of the Code. The Full Bench also noticed the requirement of making an endeavour to bring into operation the conciliation process. The necessary observations of the Full Bench in this regard may be noticed and these are as follows:-

> “12.....The balance in each case will have to be struck to ensure that complete justice is done between the parties and for achieving this, each individual case will have to be scrutinised to find out whether it attracts any of

the provisions incorporated in Section 482 of the Code to impel the Court to grant relief to a party either in the exercise of the aforesaid power or under Article 226 of the Constitution. Therefore, we would not like to launch an exercise for determining the scope of judicial intervention as provided under Section 482 of the Code in view of the terms “abuse of the process of law” and “in the interest of justice”, as it would not be proper for us to provide a straightjacket formula for chennelising judicial responses to the facts and the circumstances of a given case. It would be more appropriate that the interpretation of these terms is left open to the response of an Hon'ble Judge to the facts and circumstances of a given case, as and when this Court is called upon to intervene in any matter for preventing the abuse of the process of law and advancing the ends of justice.”

It is, thus, clear that the Hon'ble Full Bench clearly left it to the discretion of the Judge to decide in each case to intervene under Section 482 Cr.P.C. depending upon the facts and circumstances of the case to see if quashing of the proceedings could be ordered in exercise of powers under Section 482 Cr.P.C. to secure the ends of justice and to avoid abuse of process of the Court. While interpreting the sweep of Section 482 Cr.P.C, the Hon'ble Supreme Court in **Madhu Limaye Vs. State of Maharashtra, AIR 1978 SC 47** had observed that there are only two exceptions for exercise of power under this Section and these are:-

“(1) That the power is not to be resorted to if there is a

specific provision in the Code for the redressing of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of any Court or otherwise to secure the ends of justice."

Reference in this regard can also be made to **Y. Suresh Babu Vs. State of Andhra Pradesh, JT 1987(2) SC 361** and **Mahesh Chand Vs. State of Rajasthan, (1990) 3 RCR 332** where permission to compound the offence was granted in a case of conviction under Section 326 IPC.

As already noticed, the facts in this case would rather reveal a different story. Though this may have given a cause of grievance to the mother for which she lodged an FIR against petitioner No.2, yet it can be made out that petitioner No.1 had married petitioner No.2 of her free will and he cannot be accused of abducting the daughter of petitioner No.3. The marriage has led to birth of two children. The family is living happily, against which even the complainant has withdrawn her grievances. The ties need to be strengthened rather than put to any strain. In case these proceedings are allowed to continue, it is bound to effect not only the married life of petitioner Nos.1 and 2 but would have resultant effect on their children as well and all this when case is to end only in acquittal in view of the complainant and the prosecutrix not supporting the prosecution. The end result would be wastage of time of the Court and exercise in futility. These distinctive and peculiar features of this case would make it a fit one for exercise of powers under Section 482 Cr.P.C. for quashing the proceedings to secure ends of justice.

In this regard, the observations made in Full Bench decision in Dharambir's case (supra) would be relevant whereby discretion is left with the Court/Judge in each case to decide having regard to the facts and circumstances thereof to invoke the jurisdiction under Section 482 Cr.P.C. Accordingly, I am of the considered view that no useful purpose would be likely to serve in allowing these proceedings and trial to continue.

The present petition is accordingly allowed. FIR No.353 dated 22.11.2002 registered under Sections 363, 366 IPC at Police Station, Saleem Tabri, Ludhiana, and so also subsequent proceedings arising therefrom are hereby quashed.

January 24, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**